

(2) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically finds that the Federal Government is the better level of government to govern in the area addressed by the statute; and

(3) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically intends to interfere with State powers or preempt State or local government law, regulation, or ordinance, and that such preemption is necessary.

(b) **FACTUAL FINDINGS.**—The Congress shall make specific factual findings in support of the declarations described in this section.

SEC. 4. POINT OF ORDER.

(a) **IN GENERAL.**—It shall not be in order in either the Senate or House of Representatives to consider any bill, joint resolution, or amendment that does not include a declaration of Congressional intent as required under section 3.

(b) **RULEMAKING.**—This section is enacted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, and as such, it is deemed a part of the rules of the Senate and House of Representatives, but is applicable only with respect to the matters described in section 3 and supersedes other rules of the Senate or House of Representatives only to the extent that such sections are inconsistent with such rules; and

(2) with full recognition of the constitutional right of the Senate or House of Representatives to change such rules at any time, in the same manner as in the case of any rule of the Senate or House of Representatives.

SEC. 5. ANNUAL REPORT ON STATUTORY PREEMPTION.

(a) **REPORT.**—Within 90 days after each Congress adjourns sine die, the Congressional Research Service shall prepare and make available to the public a report on the extent of Federal statutory preemption of State and local government powers enacted into law during the preceding Congress or adopted through judicial interpretation of Federal statutes.

(b) **CONTENTS.**—The report shall contain—

(1) a cumulative list of the Federal statutes preempting, in whole or in part, State and local government powers;

(2) a summary of Federal legislation enacted during the previous Congress preempting, in whole or in part, State and local government powers;

(3) an overview of recent court cases addressing Federal preemption issues; and

(4) other information the Director of the Congressional Research Service determines appropriate.

(c) **TRANSMITTAL.**—Copies of the report shall be sent to the President and the chairman of the appropriate committees in the Senate and House of Representatives.

SEC. 6. EXECUTIVE PREEMPTION OF STATE LAW.

(a) **IN GENERAL.**—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

“SEC. 560. PREEMPTION OF STATE LAW.

“(a) No executive department or agency or independent agency shall construe any statutory authorization to issue regulations as authorizing preemption of State law or local ordinance by rulemaking or other agency action unless—

“(1) the statute expressly authorizes issuance of preemptive regulations; and

“(2) the executive department, agency or independent agency concludes that the exercise of State power directly conflicts with the exercise of Federal power under the Federal statute, such that the State statutes

and the Federal rule promulgated under the Federal statute cannot be reconciled or consistently stand together.

“(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated and shall explicitly describe the scope of preemption.

“(c)(1) When an executive department or agency or independent agency proposes to act through rulemaking or other agency action to preempt State law, the department or agency shall provide all affected States notice and an opportunity for meaningful and timely input by duly elected or appointed State and local government officials or their designated representatives in the proceedings.

“(2) The notice of proposed rulemaking shall be forwarded to the Governor, the Attorney General and the presiding officer of each chamber of the legislature of each State setting forth the extent and purpose of the preemption.

“(3) In the table of contents of each Federal Register, there shall be a separate list of preemptive regulations contained within that Register.

“(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to participation in rulemaking or other agency action by duly elected or appointed State and local government officials or their designated representatives acting in their official capacities.

“(d) Unless a final executive department or agency or independent agency rule or regulation contains an explicit provision declaring the Federal Government's intent to preempt State or local government powers and an explicit description of the extent and purpose of that preemption, the rule or regulation shall not be construed to preempt any State or local government law, ordinance or regulation.

“(e)(1) Each executive department or agency or independent agency shall review the rules and regulations issued by the department or agency that preempt, in whole or in part, State or local government powers. Each executive department or agency or independent agency shall publish in the Federal Register a plan for such review. Such plan may be amended by the department or agency at any time by publishing a revision in the Federal Register.

“(2) The purpose of the review under paragraph (1) shall be to determine whether and to what extent such rules are to continue without change, consistent with the stated objectives of the applicable statutes, or are to be altered or repealed to minimize the effect of the rules on State or local government powers.

“(3) The plan under paragraph (1) shall provide for the review of all such department or agency rules and regulations within 10 years after the date of publication of such rules and regulations as final rules. For rules and regulations in effect more than 10 years on the effective date of this section, the plan shall provide for review within 3 years after such effective date.

“(f) Any Federal rule or regulation promulgated after January 1, 1997, that is promulgated in a manner inconsistent with this section shall not be binding on any State or local government, and shall not preempt any State or local government law, ordinance, or regulation.”.

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

“560. Preemption of State law.”.

SEC. 7. CONSTRUCTION.

(a) **IN GENERAL.**—No statute, or rule promulgated under such statute, enacted after

the date of enactment of this Act, shall be construed by courts or other adjudicative entities to preempt, in whole or in part, any State or local government law, ordinance or regulation unless the statute, or rule promulgated under such statute, contains an explicit declaration of intent to preempt, or unless there is a direct conflict between such statute and a State or local government law, ordinance, or regulation, such that the two cannot be reconciled or consistently stand together.

(b) **CONSTRUCTION IN FAVOR OF STATES AND PEOPLE.**—Notwithstanding any other provisions of law, any ambiguities in this Act, or in any other law of the United States, shall be construed in favor of preserving the authority of the States and the people.

(c) **SEVERABILITY.**—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 8. APPROPRIATION BY STATE LEGISLATURES.

Any funds received by a State under Federal law shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such applicable provisions of law.

By Mr. SMITH:

S. 2157. A bill to amend the Solid Waste Disposal Act to provide for the efficient collection and recycling of spent lead-acid batteries and educate the public concerning the collection and recycling of such batteries, and for other purposes; to the Committee on Environment and Public Works.

THE LEAD ACID BATTERY RECYCLING ACT

Mr. SMITH. Mr. President, I introduce lead-acid battery recycling legislation. This legislation, entitled the “Lead-Acid Battery Recycling Act,” is intended to strengthen and make uniform the existing lead-acid battery recycling infrastructure by establishing a mandatory recycling program for lead-acid batteries.

This legislation would prohibit the incineration and landfill disposal of used lead-acid batteries and require that these batteries be managed through a reverse distribution system. Under this legislation, used lead-acid batteries would have to be delivered in reverse order to battery retailers, wholesalers, manufacturers, recycling facilities or automotive dismantlers and ultimately to secondary smelters for recycling.

There is little doubt that lead-acid batteries are an extremely useful product. They are used in a variety of applications ranging from lighting and ignition systems for automobiles, power sources for electric vehicles, emergency lighting, and standby telecommunication systems. The lead contained in these batteries is, however, a cause for concern. Furthermore, given the fact that lead-acid batteries account for approximately 80 percent of all the lead consumed in the United States, they merit special attention.

This special attention has resulted in implementation of aggressive lead-acid battery recycling programs by many State and local governments as well as

the battery industry. Lead-acid batteries have now become the Nation's most successfully recycled commodity. According to the most recent statistics, over the last 5 years the lead-acid battery recycling rate in the United States has been at least 95 percent. This rate is unparalleled among any other recyclable commodity.

Forty-two States have adopted lead battery recycling legislation similar to this legislation. These 42 States account for over 85 percent of the Nation's population. However, there are variations among the State programs that create problems for the free flow of batteries in interstate commerce. My bill would reenforce the existing lead-acid battery recycling infrastructure now in place throughout the United States while making it more uniform nationwide.

This legislation is self-implementing, and does not require further development through regulation. Rather, this legislation builds upon the existing lead-acid battery collection and recycling system now in place in many States.

Upon enactment, the incineration and landfill disposal of used lead-acid batteries will be expressly prohibited. However, owners and operators of a municipal solid waste landfills, incinerators or collection programs that inadvertently receive used lead-acid batteries that are not readily removable from municipal solid waste would not be liable for violating the recycling provisions of this bill.

In general, this legislation would require used lead-acid batteries to be delivered to battery retailers, wholesalers, manufacturers, automotive dismantlers, secondary lead smelters, or recycling facilities regulated by a State or subject to regulation by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.). Used lead-acid batteries could continue to be lawfully collected through community collection and recycling programs set up by States and localities.

Although recycling is becoming an every day fact of life in the minds of the public, to ensure further consumer participation in the program, retailers are required to accept used lead acid batteries from consumers without requiring the purchase of a new lead-acid battery. In addition, battery manufacturers or their authorized representatives—such as shippers delivering new batteries—will be required to accept used lead-acid batteries from their customers.

I have included provisions for labeling and notification that are intended to ensure that consumers are aware of the recycling requirements under law. These provisions are not intended to affect or limit in any way the battery industry's efforts to display recycling symbols intended to encourage recycling.

Mr. President, as I discussed above, my legislation is substantially similar to battery recycling legislation adopt-

ed in 42 States. The bill is strongly supported by the Battery Council International. I believe this legislation provides a substantial improvement in our ability to remove these batteries from our Nation's solid waste stream and I would encourage all of my colleagues to cosponsor this legislation.

Mr. President, I realize that, in the twilight of this legislative session, there is virtually no chance of this bill will become law before this Congress adjourns. Yet, I am introducing it today with the desire that the States, the Environmental Protection Agency, environmental groups, and the regulated entities will have a chance to review it, judge its merits, and provide me with comments on how this legislation could be improved. It is my desire, that upon our return in January, to hold hearings on this legislation and to move it to the full Senate for passage early in 1997.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lead-Acid Battery Recycling Act".

SEC. 2. RECYCLING OF LEAD-ACID BATTERIES.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

"SEC. 4011. RECYCLING OF LEAD-ACID BATTERIES.

"(a) DEFINITIONS.—In this section:

"(1) LEAD-ACID BATTERY.—The term 'lead-acid battery' means a battery that—

"(A) contains lead and sulfuric acid;

"(B) is used as a power source; and

"(C) is not a rechargeable battery.

"(2) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means—

"(A) solid waste generated by the general public or from a residential, commercial, institutional, or industrial source, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible material and noncombustible material such as metal and glass, including residue remaining after recyclable material has been separated from waste destined for disposal, and including waste material removed from a septic tank, seepage pit, or cesspool (other than from portable toilets); but

"(B) does not include—

"(i) waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(ii) waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606) or any corrective action taken under this Act;

"(iii) medical waste listed in section 11002;

"(iv) industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling;

"(v) recyclable material; or

"(vi) sludge.

"(3) RECHARGEABLE BATTERY.—The term 'rechargeable battery'—

"(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

"(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack; but

"(C) does not include—

"(i) a battery that is used to start an internal combustion engine or is used as the principal electrical power source for a vehicle, such as an automobile, truck, construction equipment, motorcycle, garden tractor, golf cart, wheelchair, or boat;

"(ii) a battery that is used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

"(iii) a battery that is used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

"(iv) a rechargeable alkaline battery.

"(b) PROHIBITION.—

"(1) IN GENERAL.—A person shall not—

"(A) place a lead-acid battery in a landfill;

"(B) incinerate a lead-acid battery; or

"(C) otherwise dispose of a lead-acid battery in a manner other than in accordance with subsection (c).

"(2) COMMINGLED WASTE.—A person that is an owner or operator of a municipal solid waste landfill, incinerator, or collection program that receives a lead-acid battery that—

"(A) is commingled with municipal solid waste (other than lead-acid batteries); and

"(B) is not readily removable from the waste stream,

shall not be considered to violate paragraph (1) if the owner or operator has established contractual requirements or other appropriate notification or inspection procedures that are reasonably designed to ensure that no lead-acid battery is received at, or burned in, the landfill or incinerator facility or accepted through the collection program.

"(c) LAWFUL DISPOSAL.—

"(1) BY PERSONS IN GENERAL.—

"(A) IN GENERAL.—A person (other than a person described in paragraph (2), (3), or (4)) shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

"(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

"(i) a person that sells lead-acid batteries at retail or wholesale;

"(ii) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.);

"(iii) an automotive dismantler or scrap dealer (as defined by the Administrator);

"(iv) a collection entity, program, or facility designated by a State to accept spent lead-acid batteries; and

"(v) a manufacturer of lead-acid batteries of the same general type as the type delivered.

"(2) BY RETAILERS.—

"(A) IN GENERAL.—A person that sells lead-acid batteries at retail shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

"(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

"(i) a person that sells lead-acid batteries at wholesale;

"(ii) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.);

"(iii) an automotive dismantler or scrap dealer (as defined by the Administrator);

"(iv) a manufacturer of lead-acid batteries of the same general type as the type delivered; and

"(v) a collection entity, program, or facility designated by a State to accept spent lead-acid batteries.

"(3) BY WHOLESALE, AUTOMOTIVE DISMANTLERS, AND COLLECTION PROGRAMS, ENTITIES AND FACILITIES.—

"(A) IN GENERAL.—A person that sells lead-acid batteries at wholesale, an automotive dismantler, and a collection entity, program, or facility designated by a State to accept spent lead-acid batteries shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

"(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

"(i) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.); and

"(ii) a manufacturer of lead-acid batteries of the same general type as the type delivered.

"(4) BY MANUFACTURERS.—

"(A) IN GENERAL.—A person that manufactures lead-acid batteries shall return a spent lead-acid battery by delivering the battery to the authorized recipient described in subparagraph (B).

"(B) AUTHORIZED RECIPIENT.—The authorized recipient described in this subparagraph is a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.).

"(d) COLLECTION REQUIREMENTS.—

"(1) RETAILERS.—

"(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at retail shall accept spent lead-acid batteries of the same general type as the batteries sold in a quantity that is approximately equal to the number of batteries sold.

"(B) EXEMPTION.—Subparagraph (A) shall not apply to a retailer that sells not more than 5 lead-acid batteries per month on average over a calendar year, if a collection entity, program, or facility is in operation for the collection of spent lead-acid batteries in the locality of the retailer.

"(2) WHOLESALE.—

"(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at wholesale shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

"(B) ACCEPTANCE FROM RETAILERS.—A wholesaler that sells or offers for sale lead-acid batteries to a retailer shall provide for the removal of spent lead-acid batteries at the place of business of the retailer—

"(i) not later than 90 days after the retailer notifies the wholesaler of the existence of the spent lead-acid batteries for removal; or

"(ii) if the quantity of batteries to be removed is less than 5, not later than 180 days after notification.

"(3) MANUFACTURERS.—A person that manufactures lead-acid batteries shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

"(e) NOTICE REQUIREMENTS.—

"(1) POSTED NOTICE BY RETAILERS.—A person that sells or offers for sale lead-acid batteries at retail shall post a written notice that—

"(A) is clearly visible in a public area of the establishment in which the lead-acid batteries are sold or offered for sale;

"(B) is at least 8½ inches by 11 inches in size; and

"(C) contains the following text:

"(i) It is illegal to throw away a motor vehicle battery or other lead-acid battery.

"(ii) Recycle your used lead-acid batteries.

"(iii) Federal (or State) law requires battery retailers to accept used lead-acid batteries for recycling when a lead-acid battery is purchased.

"(2) STATE REQUIREMENTS.—Nothing in paragraph (1) shall be construed to prohibit a State from requiring the posting of substantially similar notice in lieu of that required under paragraph (1).

"(3) LABELING.—

"(A) IN GENERAL.—Each lead-acid battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall bear a label comprised of—

"(i) the 3 chasing arrow recycling symbol; and

"(ii) immediately adjacent to the recycling symbol, the words 'LEAD', 'RETURN', 'RECYCLE'.

"(B) INTERNATIONAL SYMBOLS.—

"(i) APPLICATION.—On application by a person subject to the labeling requirements of this paragraph, the Administrator shall certify that a different label meets the requirements of this paragraph if the label conforms with a recognized international standard that is consistent with the overall purposes of this section.

"(ii) FAILURE TO ACT.—If the Administrator fails to act on an application under clause (i) within 120 days after the date on which the application is filed, the Administrator shall be considered to have certified that the label proposed in the application meets the requirements of this paragraph.

"(4) UNIFORMITY.—No State or political subdivision of a State may enforce any labeling requirement intended to communicate information about the recyclability of lead-acid batteries that is not identical to the requirements contained in paragraph (3).

"(5) RECYCLING INFORMATION.—Nothing in this subsection shall be construed to prohibit the display on a label of a lead-acid battery of any other information intended by the manufacturer to encourage recycling or warn consumers of the potential hazards associated with lead-acid batteries.

"(f) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this section, the Administrator shall publish in the Federal Register a notice of the requirements of this section and such other related information as the Administrator determines to be appropriate.

"(g) EXPORT FOR PURPOSES OF RECYCLING.—Notwithstanding any other provision of this section, a person may export a spent lead-acid battery for the purposes of recycling.

"(h) ENFORCEMENT.—The Administrator may issue a warning or citation to any person that fails to comply with the requirements of this section.

"(i) CIVIL PENALTY.—

"(1) IN GENERAL.—When on the basis of any information the Administrator determines that a person is in violation of this section, the Administrator—

"(A) in the case of a willful violation, may issue an order assessing a civil penalty of not more than \$1,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

"(B) in the case of any violation, may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

"(2) CONTENTS OF ORDER.—An order under paragraph (1) shall state with reasonable specificity the nature of the violation.

"(3) CONSIDERATIONS.—In assessing a civil penalty under paragraph (1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

"(4) FINALITY OF ORDER; REQUEST FOR HEARING.—An order under paragraph (1) shall become final unless, not later than 30 days after the date on which the order is served, a person named in the order requests a hearing on the record.

"(5) HEARING.—On receiving a request under paragraph (4), the Administrator shall promptly conduct a hearing on the record.

"(6) SUBPOENA POWER.—In connection with any hearing on the record under this subsection, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

"(7) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under paragraph (1), the Administrator may assess a civil penalty of not more than \$1,000 for the continued noncompliance with the order." •

By Mr. LIEBERMAN:

S. 2160. A bill to provide for alternative procedures for achieving superior environmental performance, and for other purposes; to the Committee on Environment and Public Works.

THE INNOVATIVE COMPLIANCE ACT

• Mr. LIEBERMAN. Mr. President, I am pleased to introduce today the Innovative Compliance Act of 1996. Title I of this legislation authorizes the Environmental Protection Agency to approve a demonstration program allowing companies who show superior environmental performance to use flexible methods of achieving environmental goals. Title II of the legislation requires the EPA, when developing a new program to control a pollutant to consider, where appropriate, basing the regulatory scheme on market-based trading programs. The legislation builds on President Clinton's project XL which stands for excellence and leadership, and on the successful market-based program for controlling acid rain established under the Clean Air Act Amendments of 1990.

Mr. President, I am introducing this bill at the end of this session in the hope that it will lead to a continued dialog among interested parties on the best way to implement these two programs. I view this bill as an initial draft, discussion draft and welcome all proposals and suggestions on how to alter and improve it. I hope to resubmit the bill reflecting suggestions made over the next few months early next session.

This Congress has been marked by debate about the future of Government's role in environmental protection. At times, it appeared that the bipartisan support of environmental laws and regulation that has evolved over the past three decades was at serious risk. Efforts to undermine our environmental laws initially had support from some in this Congress, despite the absence of any public demand for retrenchment on the environmental